88-1813

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1988

THOMAS J. RALEY
Petitioner

v.

FRANKLIN W. HUGHES and SANDRA L. HUGHES
Respondents.

WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS
OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a decision by the state courts of Maryland refusing to set aside a fraudulent conveyance in an action between private parties constitutes a denial of due process where the decision is contrary to the settled law of that state and contrary to the undisputed facts of the case?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW . . .	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	3
STATEMENT OF THE CASE	7
ARGUMENT	
THE COURTS OF THE STATE OF MARYLAND DEPRIVED PETITIONER OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW BY ENTERING A DECISION AGAINST PETITIONER WHICH WAS CONTRARY TO ESTABLISHED LAW AND TO THE UNDISPUTED FACTS OF THE CASE, ALL OF WHICH SERVED TO DEPRIVE PETITIONER OF SUBSTANTIAL RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT	14
CONCLUSION	24

TABLE OF AUTHORITIES

Cases — Page

Birely's Executors v. Staley, 5 G. & J. 432, 25 Am. Dec. 303 (1833) 18

Damazo v. Wahby, 269 Md. 252, 305 A.2d 138 (1973) 18

Goodman v. Wineland, 61 Md. 449 (1884) 17

Griffin v. Illinois, 351 U.S. 12 (1956) 15

Hull v. William Deering & Co., 80 Md. 424, 31 A. 416 (1895) 19

In re Trader, 20 Md. App. 1, 315 A.2d 528 (1974) 15

Lacey v. Van Royen, 295 Md. 80, 287 A.2d 91 (1970) . . . 17, 18

Lutherville Supply & Equipment Co. v. Dimon, 232 Md. 195, 192 A.2d 496 (1963) 17

Milholland v. Tiffany, 64 Md. 455, 2 A. 831 (1886) 18

Pearce v. Micka, 62 Md. App. 265, 489 A.2d 48 (1985) 17

Postal Telegraph Cable Co. v. City of Newport, Kentucky, 247 U.S. 464 (1918) 15

TABLE OF AUTHORITIES (CONT)

Cases — Page

Ressmeyer v. Norwood, 117 Md. 320, 83 A. 633 (1926) 16

Turner v. State of Louisiana, 379 U.S. 466 (1965) 14

Wellcraft Marine Corp. v. Roeder, ___ Md. ___, 550 A.2d 377 (1988) 22

Westminister Savings Bank v. Sauble, 183 Md. 628, 39 A.2d 862 (1944) 16

Statutes

Md. Com. Law Code Ann. § 15-203 . . . 16

Md. Com. Law Code Ann. § 15-204 . . . . . 15, 16

Md. Fam. Law. Cpde Ann. § 4-301 . . . 16

OPINIONS BELOW

The judgment of the Circuit Court for Baltimore County, Maryland, rendered in open court is unreported and is included in the appendix at A-1. The order of the Court of Special Appeals of Maryland affirming the judgment of the Circuit Court for Baltimore County, Maryland, is unreported and is included in the appendix at A-7. The order of the Court of Appeals of Maryland denying certiorari to review the order of the Court of Special Appeals of Maryland is unreported and is included in the appendix at A-26.

JURISDICTION

The judgment of the Circuit Court for Baltimore County, Maryland, finding against the Petitioner-Plaintiff was entered on September 22, 1987. The order of the Court of Special Appeals of Maryland affirming the circuit court judgment was entered on September 26, 1988. The order of the Court of Appeals of Maryland denying certiorari to Petitioner was entered January 11, 1989. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3) (1948).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The fourteenth amendment to the United States Constitution provides in pertinent part that "nor shall any state deprive any person of life, liberty or property without due process of law[.]"

Md. Com. Law Code Ann. §§ 15-201 through -204 (1983) provides:

> **§ 15-201. Definitions**
>
> (a) In general.--In this subtitle the following words have the meanings indicated.
>
> (b) Assets.--(1) "Assets" means property of a debtor not exempt from liability for his debts.
>
> (2) "Assets" includes any property to the extent that the property is liable for any debts of a debtor.
>
> (c) Conveyance.--"Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage, or pledge of tangible or intan-

gible property, and also the creation of any lien or incumbrance.

(d) Creditor.--"Creditor" means a person who has any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.

(e) Debt.--"Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent. (An. Code 1957, art. 39B, § 1; 1975, ch. 49, § 3.)

§ 15-202. Insolvency.

(a) In general.--A person is insolvent if the present fair market value of his assets is less than the amount required to pay his probable liability on his existing debts as they become absolute and matured.

(b) Partnerships.--In determining if a partnership is insolvent, there shall be added to the partnership property:

(1) The present fair market value of the separate assets of each general partner in excess of the amount probably suffi-

cient to meet the claims of his separate creditors; and

(2) The amount of any unpaid subscription to the partnership of each limited partner, if the present fair market value of the assets of the limited partner is probably sufficient to pay his debts, including the unpaid subscription. (An. Code 1957, art. 39B, § 2; 1975, ch. 49, § 3.)

§ 15-203. Fair consideration.

Fair consideration is given for property or an obligation, if:

(1) In exchange for the property or obligation, as a fair equivalent for it and in good faith, property is conveyed or an antecedent debt is satisfied; or

(2) The property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained. (An. Code 1957, art. 39B, § 3; 1975, ch. 49, § 3.)

§ 15-204. Conveyance by insolvent.

Every conveyance made and every obligation incurred by a person who is or will be rendered insolvent by it is fraudulent as to creditors without regard to his actual intent, if the conveyance is made or the obligation is incurred without a fair consideration. (An. Code 1957, art. 39B, § 4; 1975, ch. 49, § 3.)

Md. Fam. Law Code Ann. § 4-301(d)(2)(i) (1984) provides:

(2)(i) A transfer of property between spouses is invalid if made in prejudice of the rights of present creditors.

STATEMENT OF THE CASE

This action has arisen out of a civil dispute between private parties wherein the Plaintiff sought to set aside a fraudulent conveyance of stock from Defendant Franklin Hughes to Franklin Hughes and his wife SANDRA as tenants by the entireties. The conveyance operated to deprive Plaintiff of his ability to enforce his sizable judgment against Mr. Hughes.

At the trial on the merits held before the Circuit Court for Baltimore County on September 21 and 22, 1987, apart from the numerous contested factual issues before the court, the following undisputed facts were established.

In 1975, Petitioner sold a parcel of land together with an operating tavern

thereon to Defendant Franklin Hughes. The value of the property was fixed by its purchase price of $250,000 (A-28). In January 1978, the outstanding balance was rewritten into a new agreement containing a fixed payment schedule (A-29). At the time of the sale, the actual ownership of the property was transferred to F. Hughes, Inc., a corporation whose sole stockholder was Hughes (A-29). At some time or times between 1975 and 1977, Hughes and his wife SANDRA Hughes allegedly borrowed sums not in excess of $100,000 (A-35). At least $50,000 of those loan proceeds were used as capital expenditures for F. Hughes, Inc. to reduce certain debts which were in existence at the time of purchase (A-36).

In November 1978, Hughes ceased making payments on the note to Petitioner (A-39). At that time the balance due was $198,000 with interest accruing at the rate of 10% per annum. No subsequent payments were ever made (A-40). By the end of December 1979, Hughes and the corporation owed numerous creditors as well as tax arrears (A-41). Hughes also by then owed Petitioner $220,000, including $20,000 in interest accrued over the preceding 12 months (A-39). Hughes's total income for 1979 was $13,000 (A-42). At the very end of December 1979, Hughes transferred the stock in F. Hughes, Inc. and with it the tavern property and business to himself and his wife as tenants by the entireties, thereby ostensibly removing the stock and assets from the

reach of Petitioner and Hughes's other creditors (A-34, A-42). The consideration alleged to support the transfer was the antecedent debt or debts incurred by Mrs. Hughes (A-44).

In 1983, Petitioner sued Hughes on the note and obtained a judgment in the sum of $358,000 (A-37). Hereafter, when attempting to enforce his judgment, Petitioner discovered he was prevented from executing on the property and business because the corporate stock had been transferred into the tenancy by entireties (A-45). Petitioner then sought to avoid the transfer as a fraudulent conveyance by filing this suit against Mr. and Mrs. Hughes.

At the trial on the merits, after Petitioner established inter alia the

facts set forth above including the transfer of the stock in the face of a preexisting debt then in default, the Defendants did not put forth any tangible evidence to establish that Hughes was solvent at the time of the contested conveyance. Instead, Defendants presented mere unsupported, conclusory assertions of solvency offered by themselves and their accountant. Mr. Hughes said that "I was paying my bills" (A-46). His accountant said Hughes was solvent "to the best of my knowledge" (A-47). Mrs. Hughes said "we were going bankrupt. We didn't have any money" (A-48). Counsel for Defendants openly asserted that no proof of assets had to be made; that an unsupported statement of solvency was sufficient (A-49).

Accordingly, no evidence whatsoever was adduced to specifically establish that the fair market value of Hughes's assets were sufficient to pay his debts as they fell due. In fact, Defendants put on no evidence at all regarding the fair market value of Hughes's individual assets. To the contrary, the only evidence offered showed that he had no assets following the transfer (A-50).

After losing in the trial court, Petitioner appealed that decision to the Court of Special Appeals which affirmed (A-1, A-7). The Court of Appeals of Maryland denied certiorari (A-26).

The federal question presented is whether the denial of relief to Petitioner by the courts of the State of Maryland contrary to established law and

the undisputed facts of the case deprived Petitioner of his property without due process of law in contravention to his rights guaranteed by the fourteenth amendment. This issue did not arise until the Court of Appeals of Maryland denied Petitioner certiorari, thereby concluding Petitioner's state court remedies and giving rise to this constitutional issue.

ARGUMENT

THE COURTS OF THE STATE OF MARYLAND DEPRIVED PETITIONER OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW BY ENTERING A DECISION AGAINST PETITIONER WHICH WAS CONTRARY TO ESTABLISHED LAW AND TO THE UNDISPUTED FACTS OF THE CASE, ALL OF WHICH SERVED TO DEPRIVE PETITIONER OF SUBSTANTIAL RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT.

Certiorari can be granted whenever a decision of a state court deprives a party of his rights under the fourteenth amendment to the Constitution of the United States. Turner v. State of Louisiana, 379 U.S. 466 (1965).

Where, in an action between private parties, a case is decided arbitrarily and capriciously in a manner which violates established principles of law and which is contrary to undisputed facts, the judgment constitutes a taking

of property without due process of law in violation of the fourteenth amendment. Postal Telegraph Cable Co. v. City of Newport, Kentucky, 247 U.S. 464 (1918); Williams v. Tooke, 108 F.2d 758 (5th Cir. 1940). Although states are not required to provide the right of appellate review, when they do a litigant continues to be protected from denials of due process as guaranteed by the fourteenth amendment. Griffin v. Illinois, 351 U.S. 12 (1956); In re Trader, 20 Md. App. 1, 315 A.2d 528 (1974).

The law in Maryland governing fraudulent conveyances is well established both by statute and by case authority. Md. Com. Law Code Ann. § 15-204 (1983) states in pertinent part that "[e]very conveyance made . . . by a

person who is insolvent or will be rendered insolvent by it is fraudulent as to creditors without regard to his actual intent, if the conveyance is incurred without a fair consideration." See also Westminister Savings Bank v. Sauble, 183 Md. 628, 39 A.2d 862 (1944). M.C.L.C.A. § 15-203 defines fair consideration as a "fair equivalent" for the property conveyed, and, in the case of an antecedent debt, "not disproportionately small as compared to the value of the property . . . obtained." In addition to M.C.L.C.A. § 15-204, Md. Fam. Law. Code Ann. § 4-301(d)(2)(i) (1984) expressly invalidates any transfer between spouses which prejudices a creditor's rights. Ressmeyer v. Norwood, 117 Md. 320, 83 A. 633 (1926). When a husband transfers

property to himself and his wife as tenants by the entireties without fair consideration, the entire transaction is void if insolvency results. Pearce v. Micka, 62 Md. App. 265, 489 A.2d 48 (1985); Lutherville Supply & Equipment Co. v. Dimon, 232 Md. 195, 192 A.2d 496 (1963).

In Maryland, a creditor makes a prima facie case for a fraudulent transfer whenever he establishes a voluntary conveyance by a debtor without fair consideration while the transferor had an antecedent debt to the creditor. Lacey v. Van Royen, 295 Md. 80, 287 A.2d 91 (1970); Goodman v. Wineland, 61 Md. 449 (1884). Upon such a prima facie showing, the presumption arises that the debtor was either insolvent at the time

or was rendered insolvent by the conveyance, and the burden of proof is on the debtor to establish solvency and to otherwise uphold the gift. Lacey v. Van Royen, supra, 287 A.2d at 98. The presumption cannot be rebutted by mere words alone; hard evidence is required before the presumption is repelled. Damazo v. Wahby, 269 Md. 252, 305 A.2d 138 (1973). Accordingly, the mere recital of solvency in a deed from husband to wife is insufficient. Milholland v. Tiffany, 64 Md. 455, 2 A. 831 (1886). Indeed, even the production of deeds to other property to establish solvency is inadequate without proof of the existence of the land itself. Birely's Executors v. Staley, 5 G. & J. 432, 25 Am. Dec. 303 (1833).

Finally, where there was consideration but it was inadequate, the conveyance must be set aside except to the extent of the consideration given. Hull v. William Deering & Co., 80 Md. 424, 31 A. 416 (1895).

Defendants failed as a matter of law to establish that any consideration whatsoever passed. As a matter of law, transferee innocence cannot be interposed by a transferee spouse. However, for the benefit of this Petition only, Petitioner assumes arguendo that Mrs. Hughes can interpose the defense of innocence as to her half interest and that there was consideration given not exceeding 50% of the value of the assets fraudulently transferred. Even with these constraints operating to Defendants' benefit, an

application of the laws of Maryland as set forth above to the uncontested facts of this case clearly demonstrates the severe constitutional deprivation suffered by Petitioner before the Maryland courts.

The transfer at issue is one which can properly be set aside. Specifically, interspousal transfers from one spouse to both as tenants by the entireties are subject to being avoided as fraudulent conveyances, if the transferor was insolvent or was rendered insolvent by the conveyance and if it was not for fair consideration.

Hughes was insolvent at the time of the transfer or was rendered insolvent as a result. Petitioner established his prima facie case by shcwing that Hughes

made a transfer while in default on a preexisting indebtedness to Petitioner. By law, the burden shifted to the Defendants to prove that Hughes was solvent at the time of the transfer and remained solvent in spite of it. Because they relied upon conclusory assertions of solvency, by law the Defendants failed to meet their burden. Accordingly, for purposes of the trial in this case, Hughes was insolvent as a matter of law.

The conveyance by Hughes to the entireties was not made for a fair consideration. The transfer of an asset worth $250,000 or more based on an antecedent debt of $100,000 or less is a transfer based upon a disproportionately small consideration. As a matter of law, the transfer must be set aside for any

amount above the consideration given.

Based upon the foregoing, the Petitioner had at least the right to set aside that portion of Hughes's conveyance to himself, thereby entitling Petitioner to execute on 50% of the stock in the corporation. By denying Petitioner that relief, the state courts of Maryland have totally disregarded Petitioner's right to due process. Indeed, a mere six weeks before denying certiorari to Petitioner, the Maryland Court of Appeals granted certiorari in a fraudulent conveyances action and reversed on behalf of a plaintiff who had alleged that a prima facie showing had shifted the burden under circumstances far less compelling than those in this case. Wellcraft Marine Corp. v. Roeder, ___ Md. ___, 550

A.2d 377 (1988). By failing to permit Petitioner to set aside at least half of the transfer at issue, the Maryland courts totally disregarded established law and uncontested facts which clearly commanded a judgment in Petitioner's favor. By preventing Petitioner from enforcing his judgment, the Maryland courts have deprived him of his property without due process of law in violation of Petitioner's rights guaranteed by the fourteenth amendment.

CONCLUSION

For the foregoing reasons, the Petitioner Thomas J. Raley respectfully requests this Court to issue a writ of certiorari to the Court of Special Appeals of Maryland.

Respectfully submitted,

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